IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 810 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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BHARATBHAI GOPALBHAI PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR VIJAY H PATEL for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA
and
HONOURABLE MR.JUSTICE MD SHAH
Date : 13/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.This appeal under Sec.374 of the Code of Criminal Procedure has been preferred by the

appellant who has been charged and tried for the offence punishable under Sec.302 of Indian Penal Code in Sessions Case No.133 of 1995 wherein he was convicted to undergo imprisonment for life and fine of Rs.500/-, in default, to undergo simple imprisonment for 15 days by the learned Sessions Judge, Ahmedabad (Rural) by the judgment and order dated 28-7-1997.

2.The case of the prosecution in short is that marriage of the present appellant was solemnized with Pramilaben, daughter of the elder brother of the deceased. However, some matrimonial dispute existed between the appellant and his wife Pramilaben and, therefore, Pramilaben was staying at her parental house since long. Meanwhile, Pramilaben lost her father and deceased being uncle of Pramilaben was looking after the family of his elder brother and was also taking interest in the settlement between the

appellant and Pramilaben. However, settlement could not take place and therefore, it was in the mind of the appellant accused that it is because of the deceased that his matrimonial dispute is not being settled and, therefore, keeping this grudge in mind, on the day of incident i.e. on 4-3-1995 at about 9.45 p.m., when the deceased Lilachand was passing through Ranip vegetable market more particularly very near to Kalubhai's Pan shop, the appellant came with knife and gave blows with knife on various parts of the deceased. Even after the deceased fell down, the appellant continued to give blows to the deceased. People gathered there could not even rescue the deceased and it was at the arrival of PSI, Shri Gohil, who was passing by on his scooter that the deceased was stopped from inflicting blows by the accused and the accused was apprehended on the spot with knife. Shri Gohil called other persons including Head Constable, Shri Gautam, to make

arrangements for sending the injured to Civil Hospital in an autorickshaw. He also instructed Head Constable Shri Gautam to take the accused along with knife into Sabarmati Police Station. Meanwhile, injured was taken to Civil Hospital but as there was strike by doctors at the Civil Hospital, injured was taken to V.S.Hospital where he was declared dead by the doctor. Said information was passed on to Sabarmati Police Station where PSI lodged complaint on behalf of State against the appellant for the offence punishable under Sec.302 of IPC and accused was arrested. The offence was registered as Sabarmati Police Station C.R.No.I-39 of 1995. Thereafter, inquest panchnama and panchnama of scene of offence were drawn, arrangement was made for sending dead body of the deceased for post mortem, seizure panchnama of cloth of accused, knife, etc. was completed and accused was sent into judicial custody. Further investigation was done by P.I., Sabarmati

Police Station, Mr.Puwar. He recorded statements of various witnesses including statements of eye witnesses and also made arrangements for sending muddamal to FSL. He also collected copy of death certificate and on arrival of post mortem report kept it with the investigation papers. At the end of investigation, charge sheet was submitted into the Court.

3.As the offence was exclusively triable by Court of Sessions, case was committed into the Court of Sessions where it was numbered as Sessions Case No.133 of 1995. Learned Sessions Judge, Ahmedabad (Rural) framed charge against the accused at Ex.3. Charge was read over and explained to the accused. The accused pleaded not guilty to the charge and prayed for trial.

4.To prove the guilt against the accused, prosecution examined, in all, 14 witnesses and also placed reliance upon documentary evidence numbering 18. On submission of closing purshis

by the prosecution, learned Sessions Judge recorded further statement of the accused under Sec.313 of Cr.P.C. After hearing the learned counsel appearing for the respective parties, learned Sessions Judge delivered the impugned judgment giving rise to prefer the present appeal.

5.We have heard learned counsel for the appellant, Mr.Vijay H.Patel and learned APP, Mr.R.C.Kodekar for the respondent-State. Also gone through oral as well as documentary evidence on record shown to us by the learned counsel for the respective parties along with the reasoned judgment and order of conviction passed by the court below.

6.Mr.Vjay H.Patel, learned counsel for the appellant took us through evidence on record more particularly evidence of P.W.No.1, Chinubhai Karsanji Waghela at Ex.6; P.W.No.2, Babuji Chhanaji at Ex.8; P.W.No.3, Vadilal Jivanlal Patel at Ex.9; P.W.No.4, Pramilaben

Atmaram Patel at Ex.10 and P.W.No.5, Raghuvirsinh Tapubha Gohil at Ex.11. P.W. Nos.1,2 and 3 are eye witnesses, P.W.No.3 is the person who took the injured in his autorickshaw to Civil Hospital, P.W.No.4 is the wife of the appellant and P.W.No.5 is the PSI who apprehended the appellant on the spot with knife while giving blows to the deceased.

7. Showing the above referred evidence, it has been argued that evidence on record are not satisfactory to connect the accused with the crime in question. He is not disputing the death as homicidal. However, according to him, now second stage comes for the prosecution to connect the accused with the crime in question. Here in this case, prosecution has totally failed to prove the same. It has also been argued that appellant has been falsely involved into the crime in question as there was a matrimonial dispute between him and his wife and the deceased was his uncle-in-law and has

been killed by somebody else with ulterior motive, but the appellant has been involved into the crime in question. It has also been argued that there is a delay in lodging the FIR.

8. Learned APP, Mr.Kodekar, also took us through the evidence relied on by the learned counsel for the appellant together with the reasoned judgment and order passed by the court below and argued that prosecution proved that death of the deceased was homicidal death. Not only that, the appellant was caught red handed on the spot by the police official who incidentally was there and thereafter he was taken to Sabarmati Police Station along with weapon alleged to have been used in the crime in question. It has also been argued that various eye witnesses examined by the prosecution have supported the say of the prosecution in toto and nothing came out in their cross examination shaking their evidence.

He further argued that it is a cruel murder which has been taken place in broad day light on a public place and when the accused has been apprehended on the spot, it cannot be said that he was wrongly involved in the crime in question. It has also been argued that even after Lilachand fell down, the accused continued to inflict knife blows to the deceased which shows his clear intention to kill the deceased and, therefore, it cannot be said that the incident has taken place all of a sudden or as a result of sudden provocation. He therefore sought to dismiss the petition.

9.It reflects from the record and proceedings that to prove the aspect of homicidal death, prosecution mainly placed reliance upon the evidence of P.W.No.6, Dr.Dilip Manubhai Desai at Ex.14, who performed post mortem on the body of the deceased; opinion and certificate issued by the said doctor; post mortem note Ex.15; inquest panchnama Ex.13; panchnama of seizure

of muddamal knife and stick from the accused at Ex.30; panchnama of seizure of cloth of the deceased at Ex.23 and panchnama of seizure of cloth of the accused at Ex.31.

10.It is required to be noted that learned counsel for the appellant has not disputed the aspect of homicidal death. Still, however, for the satisfaction of the court, he took us through the above referred evidence more particularly of P.W.Nos.1 to 3 and 5 who are the eye witnesses together with the inquest panchnama, panchnama of scene of offence, panchnama of seizure of clothes of deceased and accused, panchnama of recovery of knife, stick, post mortem, oral evidence of Medical Officer who performed the post mortem as well as evidence of eye witnesses and evidence of the person who was apprehended along with evidence of FSL, etc. note which proved that it is a case of homicidal death.

11.Now the question comes as to whether the

accused can be held guilty for that or not. For which, at the cost of repetition, we say that learned counsel for the appellant took us through the oral evidence of eye witnesses. We have also gone through the evidence of above referred witnesses.

12.Chinubhai Karsanji Waghela, who has been examined as prosecution witness No.1 at Ex.6 has categorically deposed that he is having a pan shop (galla) very near to the place of incident. He has further deposed that at the time of incident, he was standing along with one Babubhai Thakore near the said galla at about 9.45 p.m. At that time, PSI, Shri Gohil, who came there informed that he is going to attend the Court and hence has started his scooter. At that time, as Shri Gohil heard some noise at a distance of about 15-16 feet, he stopped his scooter when he saw one person giving knife blows to an old man. Shri Gohil apprehended the said person giving blows with

knife in his hand. During that period, he went at the place of incident along with Babubhai and saw PSI Shri Gohil making arrangements to send the injured to Civil Hospital in an autorickshaw. He also instructed Head Constable, Shri Gautam to take the accused to Police Station with stick and knife. His statement was recorded at the earliest wherein he has narrated the above facts before the I.O. He has deposed the same into the Court and has also identified the appellant in the court. He has specifically deposed that as a result of the incident, blood stains were found on the cloth of the accused as well as on the stick and knife.

13.Babuji Sanaji, who has been examined as prosecution witness No.2 at Ex.8 and claiming to be the eye witness has deposed exactly the same way by supporting the case of the prosecution. In his cross-examination, nothing contrary came out so as to shake his evidence.

14.Mr.Vadilal Jivanlal Patel, who has been examined as prosecution witness No.3 at Ex.9 has deposed that he is the owner of autorickshaw bearing registration No.GRW-9296. He has further deposed that it is he who took the injured into the Civil Hospital on the day of incident. He has categorically narrated the whole incident including the fact of apprehension of the accused by PSI, Shri Gohil with knife and stick. He has also identified the accused into the Court.

15.Prosecution also examined Raghuvirsinh Tapubha Gohil at Ex.11 as prosecution witness No.5. He was serving as PSI at Sabarmatii Police Station. According to him, he tried to save the injured and apprehended the accused while accused was giving blows to the injured with knife. He also made arrangements to send the injured into the Civil Hospital in an autorickshaw and also gave instruction to send the accused to Sabarmati Police Station along

with stick and knife to Police Constable, Mr.Gautam. He also registered the complaint Ex.12 and also identified muddamal knife, stock, clothes of the deceased as well as the accused into the Court. He was thoroughly cross-examined by the learned counsel for the accused. However, nothing contrary came out except some minor contradiction about the distance of 15 feet or 50 feet from the place of incident and facts regarding the work. A suggestion was also put to him whether relatives of the deceased are his relatives or not.

16. Learned APP, Mr.R.C.Kodekar, on the other hand, drew our attention that accused and deceased are from different communities as is seen from the evidence on record. We are ignoring the said suggestion as having no substance in it.

17. Now the question as raised by the learned counsel for the appellant is that FIR was

registered after a period of two hours and hence, there is a delay in lodging the FIR.

18.It is established from the evidence on record that accused has been apprehended on the spot by PSI, Shri Gohil. At that time, it was the primary duty of the concerned person to see that proper treatment is received by the injured and, therefore, he made arrangements to send the injured to the Civil Hospital. Thereafter he made arrangements to send the accused to Police Station with knife and stick. However, as there was strike of doctors in the Civil Hospital, injured was shifted to V.S.Hospital wherefrom it was informed about the death of the deceased and hence, immediately complaint was lodged. In these circumstances, it cannot be said that there is a delay in filing the complaint. Apart from the above, assailant was identified on the spot with deadly weapon, bloodstained cloth was recovered under a panchnama and name and

description of the accused were disclosed in the complaint lodged at the earliest opportunity. In these circumstances, registering of complaint is only a formality which also has been done by the concerned Officer at the earliest and hence also, it cannot be said that there is a delay in registering the offence or that there is some ulterior motive. Hence, there is no substance in the arguments of the learned counsel for the appellant that there is a delay in filing of FIR.

19.Learned counsel for the appellant, Mr.Patel has raised doubt as to the presence of the aforereferred witnesses at the place of incident. It is submitted that they are not the eye witnesses but they are chance witnesses and hence, their evidence should not be believed as trustworthy evidence. It is also submitted that the incident was as a result of sudden provocation as no motive could be proved by the

prosecution.

20.We have gone through the evidence of above referred eye witnesses. The witness Mr.Chinubhai Karsanji Waghela, who has been examined as P.W.No.1 at Ex.6 is having his pan shop very near to the incident and as the incident had happened at 9.45 p.m., his presence at the shop is quite natural. Similarly, presence of Mr.Vadilal Jivanlal Patel, P.W.No.3, who is a Watchman is also quite natural and he was on duty standing with P.W.No.1 near the place of incident. Presence of PSI, Mr.Gohil at the relevant time can also not be disputed in view of the fact that he himself has apprehended the accused on the spot. Apart from that, there are other evidence on record establishing clearly regarding his presence at the place of incident. In these circumstances, once presence of aforesaid eye witnesses has been established, one cannot say that they are the chance witnesses or got up

witnesses. Therefore, there is no substance in the argument of Mr.Patel that the above referred witnesses are chance or got up witnesses and their evidence do not inspire any confidence.

21.Next question comes as to whether evidence of aforesaid witnesses is trustworthy or not. For that, we have minutely gone through the evidence of above referred witnesses and we are fully satisfied that evidence of above referred three eye witnesses are trustworthy and believable. It is to be noted that apprehension of the accused on the spot with deadly weapon knife has been established from the oral evidence of above referred witnesses as well as from the documentary evidence such as panchnama of scene of offence, panchnama of recovery of cloth, etc. and appellant accused was identified by all the three witnesses in court also. In these circumstances, we believe the say of the eye witnesses in toto. Not only

that, prosecution gets support from the documentary evidence namely, FSL report wherein FSL expert has given opinion that bloodstain found on the cloth of accused, stick and knife is of blood group “A” which is matching with the blood group of the accused. It is also established from the post mortem report Ex.15 more particularly column No.19 that there were knife blows found on the body of the deceased. Out of 16 injuries, 7-8 injuries are internal injuries as is established from column No.21 of the post mortem report. Even cause of death also supports the say of the prosecution. In these circumstances, it cannot be said that death of the deceased is as a result of sudden provocation. As per the evidence of all the three eye witnesses, it is established that even after the deceased fell down on the ground after receiving knife injuries, accused continued to inflict knife blows on the deceased till he was apprehended by PSI, Shri

Gohil. There was no satisfactory evidence on record to show that it was due to sudden provocation that the incident took place. Moreover, there is no cross examination on this line wherein slightest suggestion has been put to any of the witnesses that there was any altercation between the deceased and the appellant resulting into sudden provocation. Not only that, prosecution is able to prove the motive through P.W.No.4 Pramilaben though not required wherein it was established that there was matrimonial dispute between the appellant and his wife and the appellant accused strongly believed that it is because of the deceased his matrimonial dispute is not being settled and, therefore, he has killed the deceased. Hence, this aspect of motive has also been proved by the prosecution. Hence, we are of the opinion that case against the appellant accused has been proved beyond reasonable doubt.

22.In view of the aforesaid facts and

circumstances, we are of the opinion that the impugned judgment and order of conviction passed by the court below is just, legal and proper warranting no interference by this Court in the present appeal.

23.We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

Under the above circumstances, appeal is required to be rejected.

24.This appeal is accordingly rejected.

(R.P.DHOLAKIA,J.)

(M.D.SHAH, J.)

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